

# Applying the DACA Guidelines – Honorable Military Discharge (Continued)

The Form DD-214 and NGB Form 22 both contain a section, “Character of Service” listing the type of discharge a service member obtained. The main types of discharge include the following:

- Honorable:
- General (under Honorable Conditions);
- Under Other Than Honorable Conditions;
- Bad Conduct;
- Dishonorable; or
- Uncharacterized.

To meet the military guideline, the “Character of Service” must be Honorable or General (under Honorable Conditions).



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# Applying the DACA Guidelines – Issues of Criminality, Public Safety and National Security

Under the Secretary's guidelines, except where DHS determines that exceptional circumstances exist, removal will not be deferred under DACA when the requestor:

- Has been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct; or
- Otherwise poses a threat to national security or public safety.



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# Special History Action Codes (HAC) for DACA Cases

For reporting purposes, special HACs have been developed for DACA cases:

- Cases being transferred to the BCU DACA Team – C3 shall be updated with ["FF5"] Sent to the Background Check Unit (BCU) for resolution.
- Cases being returned to Adjudications from the BCU DACA Team or just prior to final adjudications by the BCU DACA Team shall be updated with ["HCC5"] Received from Background Check Unit (BCU) with Resolution
- Cases being transferred to the CFDO with a fraud referral shall be updated with ["FF1"] Sent to the Fraud Detection Unit (FDU) for Analysis
- Cases being returned to Adjudications from the CFDO shall be updated with ["HCC1"] Returned from Fraud Detection Unit (FDU) with Results.



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## Post Decision Handling

- After approval of Forms I-821D and I-765, the A-file shall be routed to the NRC.
- After denial, the A-file remains at the center for 45 days and is then forwarded to the NRC if a request to review is not received through SRMT.
- Cases requiring an NTA go to the NTA Unit. NTA issuance follows current guidance and the November 7, 2011, memorandum entitled, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens. None of the denial grounds that can be reviewed via the SRMT process will be sent to the NTA Unit.



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# V. Employment Authorization Request



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## Module Objectives

The objective of this section is to provide a basic understanding of:

- The legal authority for employment authorization based on deferral of removal under DACA;
- The forms required for an employment authorization request under DACA; and
- How an individual might show economic necessity.



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## Employment Authorization under DACA

- The Secretary's memorandum provides that individuals whose removal has been deferred under DACA may receive employment authorization.
- The eligibility category for employment authorization based on a grant of deferred action is 8 CFR 274.12(c)(14) and requires a showing of economic necessity.
- To identify DACA-related EADs, the (c)(33) code will be used.
  - DACA requestors have been instructed to note the (c)(33) code on their Form I-765.
- The EAD is predicated on deferred action under DACA. Therefore, the 90-day EAD clock on the Form I-765 begins after Form I-821D is approved.



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# Employment Authorization Under DACA (Continued)

Forms I-821D and I-765, with Form I-765WS must be concurrently filed.

The new Form I-765WS is a worksheet designed to capture the information about the requestor's income, expenses, and assets needed for the economic necessity determination.

- ▣ To streamline the adjudication of the employment authorization application, the I-765WS should have been reviewed while adjudicating the Form I-821D.
- ▣ To assist officers, at intake, the Lockbox will place the I-765WS in ROP order behind the Form I-821D.

Form I-765 cannot be approved unless Form I-821D has been approved.



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# Showing Economic Necessity

- An EAD based on deferred removal under DACA requires a showing of economic necessity.
- If Form I-765WS has been completed, officers will review the information provided regarding current income, assets, and expenses to determine whether economic necessity has been established. The requestor may, but need not, include supporting documents with Form I-765WS.
- There is a general presumption that DACA requestors will need to work given their undocumented circumstances and the fact that they are not generally anticipated to have independent means. Absent evidence of sufficient independent financial resources, the Form I-765WS is sufficient to establish economic need, without any further economic analysis.



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## The (c)(33) EAD

If removal is deferred under DACA, action can be taken on the Form I-765. If the Form I-765 is approved, a (c)(33) EAD will be issued with a 2 year validity from the date of the approval, or to the end of the deferred removal under DACA, whichever is earlier.



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# VI. Processing Form I-131, Application for Travel Document



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## Module Objectives

The objective of this section is to provide a basic understanding of:

- The advance parole requirements for individuals whose removal has been deferred under DACA;
- How to apply these requirements; and
- The advance parole processing and validity periods.



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## Advance Parole

Parole is the authorization to allow an otherwise inadmissible person to physically proceed into the United States under certain safeguards and controls. Parole is not an admission.

Parole is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Advance parole is generally granted prior to the individual's departure from the United States to authorize that person's temporary parole upon his/her return to the United States following a brief absence.

The legal authority for parole is found in INA 212(d)(5)(A).



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## Advance Parole (Continued)

In accordance with the discretionary authority provided in INA 212(d)(5)(A), grants of advance parole to DACA recipients may be made based on the need to travel abroad for educational, employment, or humanitarian purposes.

- Advance Parole requests must be supported with evidence demonstrating the need to travel for one these three purposes.



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## Advance Parole - DACA Recipients

- A DACA requestor may not concurrently file Form I-131 for advance parole with his/her DACA request.
- A DACA recipient may file an advance parole request with a copy of the I-797 notice deferring removal under DACA.



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# Advance Parole Requested for Educational Purposes

If the DACA recipient is requesting advance parole to travel for educational purposes, the individual must show that the travel will be undertaken for educational pursuits.

Examples include:

- Semester abroad programs; or
- Travel necessary to conduct academic research.



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# Advance Parole Requested for Employment Purposes

If the DACA recipient is requesting advance parole to travel for employment purposes, the individual must show that the travel relates to fulfilling job requirements.

These purposes also include the pursuit of a position in the United States with a foreign employer.

Examples include:

- Overseas assignments, interview, conference, or training; or
- A meeting with overseas clients.



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# Advanced Parole Requested for Humanitarian Purposes

If the DACA recipient is requesting advance parole to travel for humanitarian purposes, the individual must show the travel is for emergent, compelling, or sympathetic circumstances.

Examples include:

- Travel for medical reasons, to visit an ailing family member, to attend funeral services for a family member or for any other urgent familial purpose.



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## Adjudication

- Advance parole valid for the duration of the event, as documented in the advance parole application, not to exceed the duration of the deferral under DACA.
- For multiple events, the advance parole is valid for the duration of all the documented events, not to exceed the duration of the deferral under DACA.



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## Advance Parole – Expedite Requests

As a general matter, expedite requests will not be granted.

However, in a dire emergency, and if properly documented and verified, if an individual were to appear at a local office, the local office has the option of processing the advance parole or working through established POCs at the Service Center under normal protocols.



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# Impact of Travel Without Advance Parole

Deferred Action is terminated automatically if an individual travels outside the United States without advance parole after removal has been deferred under DACA.



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